REMARKS

CLAIM REJECTIONS UNDER 35 U.S.C. § 102(a)

Claims 1-7 were rejected under 35 U.S.C. § 102(a) as being anticipated by Kodama et al. U.S. Patent 6,059,684 for the reasons set forth in numbered paragraph 2, on pages 2 and 3 of the Action.

CLAIM REJECTIONS UNDER 35 U.S.C. §103(a)

Claim 11 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Kodama et al. U.S. Patent No. 6,059,684 in view of Verrijp et al. U.S. Patent 5,697,837 for the reasons set forth in numbered paragraph 3, on pages 4-5 of the Action.

Claims 12-13 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kodama et a. as modified by Verrijp et al. as applied to claim 11 above, and further in view of Villemin U.S. Patent No. 5,021,024 for the reasons set forth in numbered paragraph 4, on pages 5-6 of the Action.

For the reasons set forth hereafter, it is submitted that claims 1-7 and 11-13 are patentable over the prior art.

PATENTABILITY OF THE CLAIMS

Summary of Argument

1. The present invention and the invention described in the Kodama et al. '648 patent are directed to different inventions and have different constructions.

2. The filleting device according to the present invention is operated in order to find the body point joints which represent the starting position for loosening/removing the complete fillets (breast, tenderloin) from an extremity-free poultry carcass. By contrast, the deboning method and apparatus of the Kodama et al. '648 patent serves to prepare a reference for performing the shoulder line and side portion line cutting so that the shoulder joints can be severed.

3. The measuring in Applicants device is performed three-dimensionally, i.e., the length, height and width of the body point joints whereas the measuring in the Kodama et al. '648 device is only perform two-dimensionally.

Applicants claims have been amended to define that the measuring device measures in three dimensions and that the first and second elements have means for detecting a length

and height of a first body joint point and a second body joint point and that the third measuring elements consist of two detecting parts having means for detecting a width of the first and second body joint points.

Moreover, in Applicants device, the individual dimensions of the poultry carcass are measured from the outside of the carcass for finding a starting position for loosening the fillets from the carcass. By contrast, measurement in Kodama et al. takes place on the inside of the carcass, for preparing a reference for performing shoulder line cutting and side portion line cutting.

4. Contrary to the Examiner's arguments that the invention according to the Kodama et al. '648 patent would still function even if all extremities were removed prior to the process of the removing the fillet meat, there is no suggestion or discussion at all in the '648 patent as to how the fillets could be removed without the aid of the wings.

In addition to the arguments and discussion contained in this amendment, Applicants incorporate herein by reference the discussion in and the Exhibits attached to the Amendment filed July 16, 2004.

THE PRESENT INVENTION

The present invention is directed to removing fillets from eviscerated carcasses of poultry whose extremities have all been totally detached therefrom by using a scraping device that includes a disc-like scraping element. Applicants' invention further includes a measuring device for measuring in three-dimensions the individual dimensions of the poultry carcass from the outside of the carcass for finding a starting position for loosening the fillets from the carcass. The measuring device includes a first element having means for detecting a length and height of a first body joint point, a second element having means for detecting a length and height of a second body joint point, wherein the first element and the second element are offset in the transport direction of the carcass, and a third element which is mounted behind the first and second elements which consists of two detecting parts having means for detecting a width of the first and second body joint points, respectively.

Applicants are claiming both a device for removing fillets from poultry carcasses whose extremities have all been totally detached as well as a method therefor.

By this amendment, independent claims 1 and 11 have been further amended to further clarify that the device used in connection with eviscerated carcasses of poultry whose extremities have all been totally detached therefrom and to further define the measuring device as measuring in three dimensions the individual dimensions of the poultry carcass from the outside of the carcass. Moreover, the third measuring element is now defined as having two detecting parts and means for detecting the width of the first and second body point joints.

With respect to the Examiner's interpretation of the references in the present Office Action, it is respectfully submitted that the Examiner has not correctly understood and/or interpreted the cited references for the reasons set forth hereafter.

With respect to the Kodama et al '648 patent, this patent relates to an automatic deboning method and apparatus which shows a rotatable processing unit in which poultry carcasses are processed and to which, initially, the extremities are still attached to the carcasses. Thus, the patent refers to "breast meat is separated together with wings" at col. 1, lines 7-13; "stripping breast meat using wings" and "severing

breast meat off from the wings" at col. 3, lines 10-13; "wings attached to the breast meat stripped in the breast meat stripping step" at col. 4, lines 33 and 34; and "breast meat stripping is performed in the steps of: grasping the left and right wings attached with the caput humeris 105" at col. 22, lines 22-24.

Moreover, in the brochure of the Applicant of the '648 patent, Mayekawa Mfg. Co. Ltd., attached to the July 16, 2004 amendment, step 9 refers to "breast meat stripping" and "breast/wings cut-up" in step 9 and the diagram on the second page of the brochure refers to the 9th station as "breast meat stripping" and "breast/wings cut-up". See also Fig. 1 of the '048 patent. Thus, it is clear from both the patent itself as well as an additional brochure from Mayekawa that the breast fillet is stripped and/or skinned by means of the wings attached to the fillet. Only then are the membranes cut as described with respect to the 10th station in the patent and step 10 in the brochure, in order to reach the inner fillet and to remove or pull the fillet away.

Thus, the apparatus and method shown in Kodama et al is quite different from the present invention in which the shoulder joints are measured in order to separate the breast

fillet from the carcass by scraping wherein the carcass has no extremities. In Kodama et al, in the sixth station or step 6, a measurement is carried out in order to determine the position for cutting the sinews/tendons between the wings and the fillet (7^{th} and 8^{th} station). However, this measurement in Kodama et al has nothing to do with the measurement of the present invention in which it is necessary to find a starting position for loosening the fillets from the skeleton by scraping.

In order to further explain the differences between the invention according to the Kodama et al. '648 patent and the present invention in more detail, reference is made to the two sets of color photographs attached to the amendment of July 16, 2004. The first set of photos depicts the simulated invention according to Kodama et al. The photos manually reproduce each single step of the deboning machine of Kodama et al., starting with the measuring, as can also be taken from the brochure of the applicant of the '648 patent. The second set of photos illustrates the filleting device of the present invention. Explained in greater detail, the two sets of photographs illustrate as follows:

Photos manually reproducing steps of the deboning machine of Kodama et al. (US 6,059,648

Photo No.	Work Station of Brochure	Work Station of US 6,059,648	Explanations
1	6th Station	5th Station of Fig. 2 (also Figs. 10A and 10B)	Measuring (in order to prepare shoulder line and side portion cutting to sever the shoulder joints)
2	7th Station	6th Station of Fig. 2 (also Fig. 11A)	Shoulder Joint Cutting (A) / Shoulder Portion Cutting
3	8th Station	7th Station of Fig. 2 (also Fig. 11B)	Shoulder Joint Cutting (B) / Side Portion Cutting
4	9th Station	8th Station of Fig. 2 (also Fig. 12B)	Breast Meat Stripping (by means of the wings which are still attached to the fillet(tenderloin still attached to the carcass))
5	"	"	"
6	"	"	"
7	10th Station	9th Station of Fig. 2 (also Figs. 13A and 13B)	Membrane Cutting / White Meat Line-Cutting (in order to reach the inner fillet (tender-piece) and to remove this/pull this away)
8	"	"	"
9	---	---	Revealed inner fillet (tender-piece/white meat)
10	11th Station	11th Station of Fig. 2 (also Fig. 14)	Tender-piece stripping / White Meat Removing
11	"	"	"

Photos illustrating the filleting device of the present invention

Photo No.	Figure of present invention	Explanations
1	Fig. 4 - first measuring element 12	Measuring (2-dimensional detection of the first body point joint – step 1 – length and height)
"	Fig. 4 - second measuring element 13	Measuring (2-dimensional detection of the second body point joint – step 2 – length and height (offset))
2 & 3	Fig. 4 - right and left elements 30, 31 of measuring element 14	Measuring (3-dimensional detection of the first and second body point joints – step 3 – width)
4	Fig. 4 - discs 22, 23 of scraping device	Detaching fillet using the aforementioned measuring data
5	Fig. 4 - scraping elements 17, 18	Scraping breast and inner fillet from carcass

The differences between Applicants' present invention and Kodama et al. are further explained hereafter.

MEASURING

Present invention

The measuring according to the present invention is performed in order to find the body point joints which represent the starting position for loosening/removing the complete fillets (breast, tenderloin) from an extremity-free poultry carcass.

The measuring is performed three-dimensionally, i.e. the length, height and width of the body point joints are ascertained by means of the 2-dimensional first, 2-dimensional second and 3-dimensional third elements. Independent claims 1 and 11 have been further amended to stress this three-dimensional difference. The Examiner, at the top of page 7 of the Office Action, recognized that the Kodama et al. device differed from Applicants invention in this regard, but stated that "the claim language used to describe the measuring device and scraping device are not deemed to overcome the Kodama et al. reference." As noted, the claims have now been amended to overcome Kodama et al.

Measurement takes place from the outside of the poultry carcass, i.e. the first, second and third elements contact the carcass from the outside.

U.S. Patent 6,059,648 of Kodama et al.

The measuring according to the '648 patent serves to prepare a reference for performing the shoulder line and side portion line cutting so that the shoulder joints can be severed (please see, for example, column 20, line 41 of the '648 patent).

Cutting is performed in order to sever all tendons of the shoulder joint, with the exception of the tendons between the breast fillet and the wings.

Measuring in Kodama et al. is performed two-dimensionally by the measuring bars 60, 61. Drive sections 58-59 are merely drive elements which move the measuring bars 60, 61 and supporting points which support the bars 60, 61 for rotation thereabouts, respectively (please see, for example, column 20, lines 46-55 of the '648 patent).

Measurement in Kodama et al. takes place on the inside of the poultry carcass, i.e. the measuring bars 60 and 61 are inserted into the poultry carcass, as shown in Fig. 10(B).

EXTREMITIES

Present Invention

All extremities (including the wings) have been totally detached from the poultry carcass of the present invention, as is evident from the photographs attached to the July 16, 2004 amendment. Moreover, the claims have been amended to now recite in the body of the claims--in addition to being in the preamble--that the extremities have been totally detached from the carcass.

U.S. Patent 6,059,648 of Kodama et al.

It is important and necessary that the extremities are still partly attached to the carcass of the invention according to Kodama, as the fillets are separated from the body with the help of the extremities, in particular the wings, as can be taken from the 8th Station of Fig. 1 and Fig. 2 and Fig. 12B of the '648 patent (9th Station of the brochure).

SCRAPING DEVICE

Present Invention

The rotary discs (scraping tools) of the scraping devices according to the present invention are blunt tools which scrape, not cut, and detach the fillets from poultry carcasses without damaging or cutting the bones and/or the meat. This increases the yield of fillet meat while at the same time producing a visually pleasing product.

U.S. Patent 6,059,648 to Kodama et al.

Elements 63 are not scraping devices, but oblique run cutters (rotary blades) which are edged tools in order to sever (i.e. cut through) the shoulder joints to firstly sever the outside tendons (please see, for example, column 21, line 7 ff. and column 22, line 4 ff. "…whose outward positioned tendons have been cut off by the shoulder line-cutting…"). Secondly, the inwardly positioned tendons are severed (i.e. cut through) by means of rotary cutters 65a, 65b (please see, for example, column 22, line 16 ff. "…which enables a high recovery rate cutting of the inward positioned tendons…").

U.S. Patent 5,697,837 to Verrijp et al.

With respect to the Examiner's assertions that the measuring device of Verrijp et al. U.S. Patent 5,697,837 is for measuring the individual dimensions of a poultry carcass to find a starting point for loosening fillets from the carcass, the same comments as given above with respect to the invention according to Kodama et al. apply. Moreover, the invention according to Verrijp et al. concerns a clamping saddle and the positioning and fixing on said saddle.

The Examiner's assertions the measuring device in Verrijp detects the body point joints one after the other is incorrect. The body point joints are detected in parallel and are detected from inside the carcass. Furthermore, the invention according to Verrijp discloses a cutting device, not a scraping device.

A combination of the inventions according to Kodama and to Verrijp would be erroneous and quite irrelevant. If one adds the teaching of Verrijp, i.e. the extremities have been removed prior to removing the fillet meet, to the invention according to Kodama, then the device of Kodama would not function. Accordingly, Applicants' invention as now claimed is patentable over this combination.

U.S. Patent 5,021,024 to Villemin et al.

With respect to U.S. Patent No. 5,021,024 of Villemin et al., there is a generic difference between the present invention and the device/method according to the Villemin '024 patent. In the '024 patent, the extremities of the poultry carcasses have not been detached before the fillets are removed. From Fig. 1 of the method, according to the '024 patent, it is clear that at positions D and E of the device, the fillets of poultry carcasses have already been cut, and only thereafter are the extremities removed.

Furthermore, in this method the individual carcass dimensions are not detected, so that a control of a or each scraping device as a function of the size of the products to be processed as disclosed in Applicants' present invention cannot be performed.

In the method according to the '024 patent, the sensor 17 merely detects the presence and position of the carcass to be processed. The sensor 17 of the '024 patent, therefore, has nothing in common with the detection of the size of the poultry carcasses, as described in the present invention. Therefore, it would not be obvious to combine Villemin et al. with Kodama et al. and Verrijp et al. in the manner done so by

the Examiner and Applicants' invention as how claimed is patentable over this combination.

RESPONSE TO EXAMINER'S ARGUMENTS

The Examiner's assertions that the invention according to Kodama et al. discloses the Applicants claimed invention with the exception of the removal of the fillet meat prior to the removal of all extremities from the carcass are believed to be incorrect. The same applies to the Examiner's arguments that the invention according to Kodama et al. would still function even if the extremities were removed prior to the process of removing the fillet meat. There is no hint at all in Kodama et al. as to how the fillets could be removed without the aid of the wings, i.e. which apparatus features would be necessary, and where and in which manner the apparatus tool should be applied. None of these features can be taken from either Kodama et al. alone, or in combination with any of the other cited references.

In view of the foregoing amendments and remarks, Applicants contend that this application is in condition for allowance. Accordingly, reconsideration and reexamination are respectfully requested.

Respectfully submitted,

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